

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**OZBURN-HESSEY LOGISTICS,
LLC,**

Petitioner/Appellant,

V.

**NATIONAL LABOR RELATIONS
BOARD,**

Respondent/Appellee,

**UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL
UNION,**

Intervenor.

**Case No. 15-1184
(consolidated with
Case No. 15-1242)**

MOTION TO CONSOLIDATE

Pursuant to Federal Rule of Appellate Procedure 3(b), the Petitioner, Ozburn-Hessey Logistics, LLC, respectfully submits this Motion to Consolidate and moves this Court for an Order consolidating this case with the appeal of *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, Case No. 14-1253 (consolidated with Case No 14-1289), which is also currently pending before this Court.

This is a test of certification case wherein the Petitioner, Ozburn-Hessey Logistics, LLC (“OHL”), is testing the certification of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“the Union”) as bargaining representative in the underlying representation proceeding. [See Doc. No. 10, Underlying Decision in Case].

A central issue in the test of certification concerns three ballot challenges that remain in dispute. [Doc. No. 18, Pet’r’s Opening Br., at 9]. One of the disputed ballots belongs to Carolyn Jones (“Ms. Jones”), an OHL employee whom OHL terminated before the election. [*Id.* at 9, 18]. Ms. Jones filed an unfair labor practice charge against OHL related to her termination, and that unfair labor practice charge is currently pending before this Court in a separate case. [See Case No. 14-1253 (consolidated with Case No. 14-1289)].

All parties agree that the validity of Ms. Jones’s ballot in this case “will turn on the outcome of that unfair labor practice relating to her termination, which is currently pending before this Court in Case 14-1253 and 14-1289.” [Doc. No. 21, Pet’r’s Rep. Br., at 3]. See Doc. No. 19, NLRB’s Resp’t Br. at 13 (“There is no dispute that if Jones was unlawfully discharged then her vote should count.”); Doc. No 20, Union’s Intervenor Br. at 9 (“This Court’s finding in that proceeding [referencing Case Nos. 14-1253 and 14-1289] will determine whether Jones was lawfully or unlawfully terminated, and thus, whether her vote should count.”).

The resolution of Ms. Jones' unfair labor practice charge is potentially outcome determinative of OHL's ballot challenges in the test of certification case, and therefore, it is in the interest of judicial economy and efficiency to resolve Ms. Jones' unfair labor practice case in the same proceeding as the challenge to her ballot.

Counsel for OHL conferred with counsel for the Union and the NLRB regarding this Motion and confirmed that this Motion is unopposed, with one qualification. The Union does not oppose consolidation. The NLRB does not oppose consolidation, so long as the consolidation does not change the March 18, 2016 oral argument date. OHL does not oppose proceeding with a consolidated oral argument on March 18, 2016, nor would it oppose a new oral argument date should the Court choose to consolidate the cases.

Rule 3(b) of the Federal Rules of Appellate Procedure authorizes this Court to consolidate appeals where “the parties have filed separate timely notices of appeal.” Fed. R. App. P. 3(b)(2). This Court’s Handbook of Practice and Internal Procedures also provides that separate appeals should be consolidated where they involve “similar[] or related issues” “to achieve the most efficient use of the Court’s resources, as well as to maintain consistency in [the Court’s] decisions.” The separate appeals involve related issues, because the outcome of Case Number 14-1253 (consolidated with Case No. 14-1289) will determine the validity of Ms.

Jones's vote, and therefore, the outcome of certain issues in this case. Because the separate appeals are closely related, consolidation will promote efficient use of the Court's resources and will provide consistency in the Court's decisions.

WHEREFORE, OHL respectfully requests the Court consolidate this appeal with the appeal of *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, Case No. 14-1253 (consolidated with Case No 14-1289).

Respectfully Submitted,

/s Ben H. Bodzy

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Consolidate was filed electronically with the Court's CM/ECF system and served via U.S. mail to the addresses described below this 29th day of January, 2016:

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